



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-84-12

FACTS:

You are a District Attorney. Within your office is a support enforcement unit made up of several employees, all of whose salaries are paid by the Commonwealth. The Department of Public Welfare (DPW) is about to enter into a contract with your office concerning the prosecution of cases initiated by DPW support workers. Under the contract, your office will accept referrals from the DPW office, investigate, prosecute and submit a follow-up report to DPW. Apart from this contract, the DPW intends to hire three employees as consultants under DPW contract who would be assigned to your office to assist in the investigation and prosecution of non-support cases under the supervision of one of the support unit employees. In view of the anticipated increase in the workload and responsibilities of the existing support unit to administer the DPW contract, you would like to increase their salaries to reflect these new responsibilities. You would like to use the DPW contract as the source for the increases. Under the proposal, a unit member would receive from the state Comptroller a single pay check within the District Attorney salary account. The check would reflect both the regular compensation and the supplement attributable to the DPW contract.

QUESTION:

Does G. L. c. 268A permit unit members to receive a single paycheck which is attributable to two state sources and which reflects increased responsibilities.

ANSWER:

Yes.

DISCUSSION:

The members of the support enforcement unit within the office of District Attorney are state employees within the meaning of G.L. c. 268A, s.1(q). EC-COI-82-142. As state employees, they are subject to the restrictions of G. L. c. 268A, s.7 which, in general, prohibits them from having a financial interest in a second contract made by a state agency. For example, absent qualification for an exemption, full-time employees in your office could not have a financial interest in a separate personal services contract with the Department of Mental Health. See, EC-COI-81-128.

However, the prohibitions of s.7 contemplate an additional contract over and above the employee's original contract of employment. Section 7 does not apply to state

employees who receive one paycheck which reflects funding from two or more separate sources. EC-COI-83-83. For example, in EC-COI-82-57, the Commission concluded that a municipal employee whose salary was increased to reflect expanded responsibilities and who would be receiving one paycheck from the municipality would not be in violation of s.20 [the municipal counterpart to s.7] merely because the municipality drew the funds for the single paycheck from more than one municipal agency. Similarly, in EC-COI-83-83 the Commission concluded that a state employee who receives one paycheck which reflects duties performed for two agencies would not violate s.7 where those duties are embodied in a single employment contract. Cf. EC-COI-82-142 [state employees do not violate G.L. c. 268A, s.4 by receiving a single state paycheck whose funding is attributable to municipal or federal sources.]

Accordingly, the compensation arrangement which you have proposed would not create a financial interest in a second state contract within the meaning of G.L. c. 268A, s.7.[1]

DATE AUTHORIZED: January 30, 1984

[1] This is not to say, however, that all such supplementary funding arrangements are permissible under G.L. c. 268A. For example. if the employee were not, in fact, performing additional services but were merely receiving supplementation from another state agency for work which the employee had